**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.5703 OF 2004**
**IN**
**CRIMINAL APPEAL NO. 1096 OF 2004**

Shri Shivaji Khaddappa Narute. .. Applicant
Vs
State of Maharashtra. .. Respondent

**ALONGWITH**

**CRIMINAL APPLICATION NO.5758 OF 2004**
**IN**
**CRIMINAL APPEAL NO. 1096 OF 2004**

Shri Kuber Shivaji Narute. .. Applicant
Vs
State of Maharashtra. .. Respondent

Mr. M.A. Choudhari for the applicants in both the matters.

Mrs. V.R. Bhosale, APP, for the respondent-State.

**CORAM: S.B. MHASE &**
**ANOOP V. MOHTA, JJ.**

**DATED: 20TH DECEMBER, 2004**

**P.C.:**

1. Heard Mr. Choudhari for the applicant. These are the applications by both the accused for suspsension of sentence and grant of bail. Both the accused have been convicted in Sessions Case No.23 of 2004 by the IIIrd Addl. Sessions Judge, Solapur by judgment dated 13th August, 2004. There is only one eye witness viz.

P.W.4 Sunita Waghe. She has stated that on the day of the incident, at about 9.30 a.m., she was near the house of Kuber Narute. At that time, she had seen that one male person was lying in front of the hut of Kuber (accused No.1). Thereafter, Kuber came outside the house, lifted one stone and pelted the said stone on the head of the said person. She has also stated that the father of the accused Kuber (accused No.2) was standing in the hut and there was an axe in his hand and the same was stained with blood and she reported the said incident to her mother and thereafter, PW5 the mother of Sunita PW4, reported this fact to the Police. Except this, there is no other eye witness. The injuries which were found on the deceased are as follows - (i) incised wound horizontal in direction measuring 4" X 3" on left parietal region which is 1" away from the left ear and is brain deep; (ii) incised wound measuring 1/2" X 1/2" on right side of cheek over right zygomatic process and which is oblique in direction; (iii) three CLWs on upper third of left leg. What we have noticed, prima facie, is that as to who caused the incised wound is not deposed to by the eye witness. The eye witness has only stated that the man was lying on the ground and that the accused No.1 have pelted a stone on his head. However, there is no injury found on the head which is caused by a hard and blunt object. The other three injuries have

been on the upper third of the left leg and those are contused lacerated wounds. From this, what we find is that the eye witness is, prima facie, doubtful one and this is a case where we find it is proper to suspend the sentence, even though vehemently opposed by Mrs. Bhosale, the learned A.P.P. on behalf of the State. Therefore, the following order:

**O R D E R :**

(A) The sentence imposed by the III Addl. Sessions Judge, Solapur, in Sessions Case No. 23 of 2000 dated 13th August, 2004, is hereby suspended till the hearing of the Appeal.

(B) Both the accused be released on bail on a P.R. Bond of Rs.20,000/- each and sureties in the like amount. Each of the accused is allowed to give two sureties.

(C) The accused shall report to the Mandrup Police Station, once in a week, preferably on Sunday between 10.00 a.m. to 11.00 a.m.

**[ANOOP V. MOHTA, J.]** **_[S.B. MHASE, J.]**

[srpasha@hc]